

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**CONRAD V. SALAZAR,**

**Plaintiff,**

**v.**

**No. 13-cv-0002 LH/SMV**

**FNU MENDOZA, FNU OCHOA,  
SGT. JAQUEZ, and BENJAMIN ONTIVEROS,**

**Defendants.**

**ORDER GRANTING MOTION FOR LEAVE TO FILE  
A SECOND AMENDED COMPLAINT [DOC. 26]**

THIS MATTER is before the Court on Plaintiff Conrad V. Salazar's<sup>1</sup> Motion for Leave to File A[ Second] Amended Complaint, filed October 6, 2014.<sup>2</sup> [Doc. 26] at 1–20. Plaintiff filed an Amended Complaint [Doc. 22] ("First Amended Complaint") on August 5, 2013, and it is the operative complaint in this case. In the instant motion, Plaintiff seeks to amend his First Amended Complaint. Plaintiff asks to substitute Benjamin Ontiveros for Nurse John Doe Defendant and be granted leave to file a new complaint containing the amendments described. [Doc. 26] at 3–14; *see* Memorandum Opinion and Order [Doc. 25] at 3 (granting Plaintiff "reasonable time to identify the John Doe Nurse Defendant"). Further, Plaintiff requests leave to name Defendant Ochoa in Claim III, *id.* at 14, and asks that the Court either approve the

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<sup>1</sup> At all times relevant to this suit, Plaintiff has been incarcerated and proceeding pro se and in forma pauperis. [Doc. 5]; [Doc. 22] at 5.

<sup>2</sup> Plaintiff's filing on October 6, 2014, contained (a) a motion for leave to amend his complaint to substitute Defendant John Doe with Nurse Benjamin Ontiveros and to name Defendant Ochoa in Claim III of the First Amended Complaint [Doc. 22]), [Doc. 26] at 1–20, and (b) a request that the court order Defendants to preserve certain evidence, *id.* at 21–24. This Order concerns only Plaintiff's first request concerning amendments to the First Amended Complaint.

amendments as described in the Motion for Leave to File A[ Second] Amended Complaint or allow Plaintiff time to file a new complaint with the amendments described. *Id.* at 19. Defendants filed no response, and the time for doing so has passed. Plaintiff's Motion for Leave to File A[ Second] Amended Complaint **GRANTED** as follows:

- (1) Benjamin Ontiveros will be substituted for Nurse John Doe Defendant. The parties in this case are Plaintiff Salazar and Defendants Mendoza, Ochoa, Jaquez, and Ontiveros, and the case caption is amended accordingly.
- (2) The Court will construe Plaintiff's Motion for Leave to File an Amended Complaint [Doc. 26] as a Supplement to Plaintiff's First Amended Complaint [Doc. 22] filed on October 5, 2013. Together, the First Amended Complaint and Supplement [Docs. 22 and 26] comprise Plaintiff's operative complaint. Accordingly, the Court will consider Claim III of Plaintiff's First Amended Complaint [Doc. 22] to include Plaintiff's allegations against Defendant Ochoa as alleged in the Supplement [Doc. 26].
- (3) If Plaintiff wishes to allege further facts or claims—besides those alleged in the Amended Complaint and Supplement [Docs. 22 and 26]—Plaintiff may again file another Motion for Leave to File an Amended Complaint. Any future Motion for Leave to File an Amended Complaint must contain Plaintiff's Proposed Amended Complaint as an attachment to the motion, as required by Local Rule 15.1. *See* D.N.M.LR-Civ. 15.1 (“A proposed amendment to a pleading must accompany the motion to amend.”). Any future Proposed Amended Complaint will become

Plaintiff's operative complaint, supplanting all previous complaints, amended complaints, and supplements.

**IT IS FURTHER ORDERED** that the Clerk is directed to substitute Benjamin Ontiveros to the docket caption for John Doe Defendant Nurse.

**IT IS FURTHER ORDERED** that the Clerk is directed to issue notice and waiver of service forms for Defendant Benjamin Ontiveros.

**IT IS SO ORDERED.**



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STEPHAN M. VIDMAR  
United States Magistrate Judge